

(4)

US Appl #10/789,146 (Rubach) GAU 2877 Preliminary Amendment page 2 of 2

CLAIMS:

Please DELETE claims # 7-17

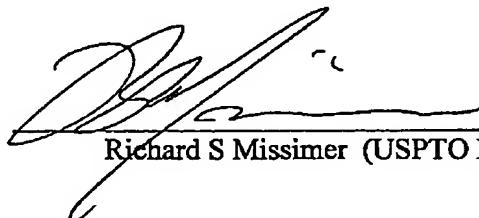
REMARKS:

The applicant has deleted the claims resolving the issue brought by the examiner. The inventor maintains the right to make modifications to the remaining claims as allowable by the examiner, and may at some time in the near future submit a "Divisional" application based on the original parent application # 10 / 789,146.

Very respectfully,

Richard S Missimer
Patent Agent for Applicant
USPTO Reg # 45,537

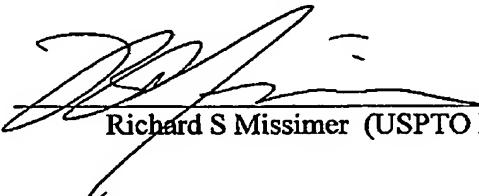
2005 October 18



Richard S Missimer (USPTO Reg # 45,537)

Certification of Facsimile Transmission: I certify that on the date below I faxed this paper to GAU 2877 of the US Patent and Trademark Office at (571) 273-8300.

2005 October 18



Richard S Missimer (USPTO Reg # 45,537)

OCT-05-2005 10:17

EVERBRITE TECH CNTR

414527122 F-01742

5



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,146	02/28/2004	James E. Rubach		9245
7390	09/19/2005			EXAMINER
James Rubach 4736 Fairway Drive Waterford, WI 53185				NGUYEN, SANG H
			ART UNIT	PAPER NUMBER
			2877	
DATE MAILED: 09/19/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Post-H ^o Fax Note	7671	Date	10/5	# of	18
To	R. MESSIMER	From	J. RUBACH		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #		Fax #			

OCT-05-2005 10:17

EVERBRITE TECH UNK

OCT 19 2005

Office Action Summary	Application No.	Applicant(s)
	10789,146	RUBACH, JAMES E.
	Examiner Sang Nguyen	Art Unit 2877

• The MAILING DATE of this communication appears on the cover sheet with the correspondence address – Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 30 day MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(d).

Status

- 1) Responsive to communication(s) filed on 28 February 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) 1-18 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) (including the correction) is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

Application/Control Number: 10/789,146
Art Unit: 2877

Page 2

(1)

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-6 and 18, drawn to a jump takeoff position indicator system and method comprising an infrared light beam emitting device, an infrared light beam detecting device, a collimating means, a synchronization means, a display means, a memory for storing the status of said plurality of infrared light beams at the moment of takeoff, and a recall switch for recalling and displaying said status on said display means, classified in class 356, subclass 614.
- II. Claims 7-17, drawn to a jump takeoff position indicator system having an infrared light beam emitting device in an electronic assembly containing a plurality of infrared LEDS spaced at predetermined intervals with at least microcontroller for controlling the operation of said plurality of infrared LEDS, wherein said infrared light beam emitting device is powered by a battery in a housing and wherein low battery detection is provided and said housing provided with a plurality of alignment marks for visual alignment of said emitting device with said detecting device, classified in class 356, subclass 226.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does

Application/Control Number: 10/789,146

Page 3

8

Art Unit: 2877

not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the subcombination requires an infrared light beam emitting device is an electronic assembly containing a plurality of infrared LEDS spaced at predetermined intervals with at least microcontroller for controlling the operation of said plurality of infrared LEDS, wherein said infrared light beam emitting device is powered by a battery in a housing and wherein low battery detection is provided and said housing provided with a plurality of alignment marks for visual alignment of said emitting device with said detecting device not required by the combination. The subcombination has separate utility such as in a system which does requires the particulars of the combination (e. g. a memory for storing the status of said plurality of infrared light beams at the moment of takeoff, and a recall switch for recalling and displaying said status on said display means).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Application/Control Number: 10/789,146
 Art Unit: 2877

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sang Nguyen whose telephone number is (571) 272-2425. The examiner can normally be reached on 9:30 am to 7:00 pm.

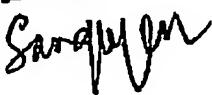
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

8N

Patent Examiner
 Sang Nguyen
 Art Unit 2877

September 12, 2005



BEST AVAILABLE COPY

9
 Page 4